

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.

**07-20353**

UNITED STATES OF AMERICA

Plaintiff,

vs.

MIAMI REHABILITATION CENTER, INC.

Defendant.

MAGISTRATE JUDGE  
TURNOFF

**CIV - CRIM**

FILED BY \_\_\_\_\_ D.C.  
2007 FEB -9 AM 9:07  
CLARENCE HADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIA.

**COMPLAINT FOR DAMAGES & PENALTIES**

The United States of America, by and through the undersigned United States Attorney,  
respectfully alleges as follows:

**JURISDICTION AND VENUE**

1. This complaint is brought by the United States for statutory damages and civil penalties under the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733. This court has subject matter jurisdiction over this action pursuant to 31 U.S.C. § 3730 and 28 U.S.C. §§ 1331 and 1345.
2. This court has personal jurisdiction over the defendant pursuant to 31 U.S.C. § 3732(a), as the defendant prepared and submitted false Medicare claims in the Southern District of Florida. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and 31 U.S.C. § 3732(a), as it is the place where the defendant resides and where a substantial part of the events or omissions giving rise to the claims occurred.

## **PARTIES**

3. Plaintiff, the United States, brings this action on behalf of the United States Department of Health and Human Services ("HHS").

4. Defendant Miami Rehabilitation Center, Inc. ("MIAMI REHAB") is a corporation organized and existing under the laws of Florida.

5. On January 22, 2002, MIAMI REHAB filed its Articles of Incorporation with the Florida Secretary of State declaring that it was incorporated on January 15, 2002, by Danny Rivero. The Articles of Incorporation also stated that Danny Rivero was the President, sole director and sole shareholder of MIAMI REHAB. In addition, the Articles of Incorporation listed Danny Rivero as the Registered Agent for MIAMI REHAB.

6. From December 17, 2003 through July 10, 2006, MIAMI REHAB filed five separate amendments to its Articles of Incorporation, with the Florida Secretary of State that made the following changes: 1) adding Henry H. Kijner to the Board of Directors of the company in his capacity as the Vice President of MIAMI REHAB and then removing him from the board two months later; 2) replacing Mr. Rivero with Wilfredo Martinez as the President, Secretary, Treasurer, Vice President and Registered Agent for MIAMI REHAB nine months later; 3) replacing Ms. Martinez with Velazco Dominguez as the President, Vice President, Secretary, Treasurer, and Registered Agent for MIAMI REHAB 18 months later; and 4) finally, on July 10, 2006 replacing Mr. Dominguez with Fran Estopinan as the President, Vice President, Secretary, Treasurer, and Registered Agent for MIAMI REHAB.

7. The July 10, 2006 corporate filing listed Mr. Estopinan's address in his capacity as President, Vice President, Secretary, Treasurer, and Registered Agent as 3298 S.W. 24<sup>th</sup> Street, Miami, Florida 33145.

8. In its Articles of Incorporation, which were filed on January 22, 2002, with the Florida Secretary of State, MIAMI REHAB represented that its principal place of business was 42 N.W. 27<sup>th</sup> Avenue, Suite 308, Miami, Florida 33125. According to MIAMI REHAB's 2004 and 2006 annual reports, which were filed with the Florida Secretary of State on March 2, 2004 and May 12, 2006, respectively, MIAMI REHAB represented that its principal place of business and mailing address was 42 N.W. 27<sup>th</sup> Avenue, Suite 421, Miami, Florida 33125.

### **THE MEDICARE PROGRAM**

9. Except as otherwise specifically noted, the statements below describe aspects of the Medicare program and other facts during the entire period relevant to this action, *i.e.*, from in or about August 2003 to July 17, 2006.

10. Medicare is a federal health insurance program which provides coverage for people age 65 or older and for certain disabled people. Medicare is financed by federal funds including funds from payroll taxes and premiums paid by beneficiaries.

11. HHS is responsible for the Medicare program. The Centers for Medicare & Medicaid Services ("CMS") is the component agency of HHS which administers and supervises the Medicare program.

12. Various entities are under contract to provide services to CMS. These services include processing and paying Medicare claims, and safeguarding the integrity of the Medicare program. Entities that provide services to CMS include First Coast Service Options ("First Coast").

13. The Medicare program is divided into different "parts." "Part A" of the Medicare program is not at issue in this case.

14. “Part B” of the Medicare program, which is involved in this case, covers, in relevant part, health care items or services provided by health care clinics.

15. Payments under the Medicare program are often made directly to a physician or provider of health care services, rather than to the patient (the “beneficiary”). This occurs when the provider accepts assignment of the right to payment from the beneficiary. In that case, the provider submits the claim to Medicare for payment, either directly or through a billing company.

16. In order to be eligible to file a claim for payment from the Medicare program, a health care clinic must submit an application (Form 855B) to obtain a provider number. In the application, the clinic agrees to abide by all Medicare laws, regulations, and program instructions applicable to health care clinics. Further, the clinic certifies that it understands that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, applicable program instructions and on the clinic’s compliance with all applicable conditions of participation in Medicare.

17. After obtaining a provider number, a clinic then submits or causes the submission of claims to an entity which processes those claims for CMS. For example, in Florida, claims for medical items or services that are covered by Part B are submitted to First Coast.

18. When a claim is submitted, the clinic certifies that the contents of the claim are true, correct and complete, and that the claim was prepared in compliance with the laws and regulations governing the Medicare program.

19. A clinic, such as the defendant, seeking reimbursement from First Coast must meet certain obligations. These obligations are to:

- bill Medicare for only reasonable and necessary medical services;

- not make false statements or misrepresentations of material facts concerning requests for payment under Medicare;
- provide economical medical services, and then, only where medically necessary;
- assure that such services are not substantially in excess of the needs of such patients; and
- not submit or cause to be submitted bills or requests for payment substantially in excess of the provider's costs.

These obligations, among others, are set forth in the United State Code and Code of Federal Regulations.

20. In order to bill the Medicare program for services purportedly rendered, MIAMI REHAB submitted a Form 1500 (which is a claims form) to First Coast. When a Form 1500 is submitted, usually in electronic form, the provider certifies that the contents of the form are true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The information in the form, which includes the beneficiary's name, the items or services furnished, the provider number of the entity that renders the item or service, and the referring physician, is the basis for the payment to the provider.

### **THE CLINIC**

21. MIAMI REHAB received a provider number (K4917) from the Medicare Program on August 12, 2003.

22. Once it received a provider number, MIAMI REHAB was able to directly bill Medicare for covered and reimbursable items and services, and to be paid directly from Medicare for such items and services.

23. Between February 8, 2006 and July 17, 2006, MIAMI REHAB through provider number K4917 submitted approximately 3,757 claims to Medicare totaling \$7,380,263.20 for health care services and items allegedly provided to Medicare beneficiaries.

24. The claims submitted by MIAMI REHAB resulted in it being paid \$1,663,812.58 by the Medicare program.

25. The health care items and services billed to Medicare by MIAMI REHAB include intravenous infusion therapy and injections, and office visits for patient evaluations and management of patient treatments, among other services and items.

### **THE FRAUDULENT SCHEME**

26. According to the claims submitted by MIAMI REHAB, only two physicians rendered health care items or services on behalf of MIAMI REHAB for which it submitted claims to the Medicare program. These physicians are: (a) Dr. Luis Francisco Guerrero; and (b) Dr. Miguel A. Garcia Blanco.

27. According to the claims submitted by MIAMI REHAB, Dr. Guerrero was the rendering and referring physician for approximately 2,923 claims submitted to Medicare by MIAMI REHAB.

28. The claims submitted by MIAMI REHAB that listed Dr. Guerrero as the rendering and referring physician totaled \$7,061,459.00.

29. The claims submitted by MIAMI REHAB for which it listed Dr. Guerrero as the rendering and referring physician resulted in MIAMI REHAB being paid \$1,641,711.09.

30. Since 2005, Dr. Guerrero has worked at the following two medical practices, which are both located in Hialeah, Florida: (a) Elite Health & Rehabilitation Center; and (b) Alive Medical Center.

31. Dr. Guerrero's medical practice is limited to seeing accident patients in general practice settings.

32. Dr. Guerrero is not affiliated with MIAMI REHAB, has never heard of MIAMI REHAB, nor has he ever worked for MIAMI REHAB.

33. Dr. Guerrero has not treated Medicare beneficiaries since 2002.

34. Dr. Guerrero did not provide medical services or items to the Medicare beneficiaries for dates of service between December 13, 2005 and May 29, 2006 whose claims make up the above referenced \$7,061,459.00.

35. The above referenced \$7,061,459.00 in claims that MIAMI REHAB submitted to the Medicare program and that listed Dr. Guerrero as the rendering and referring physician were completely fabricated claims. All of the \$1,641,711.09 paid by the Medicare program to MIAMI REHAB for these claims was the result of false claims.

#### **COUNT I**

(False Claims Act: Presentation of False Claims)

(31 U.S.C. § 3729(a)(1))

36. The United States re-alleges and incorporates by reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

37. This is a claim for statutory damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1), against defendant for knowingly presenting or causing to be presented, false or fraudulent claims to the United States.

38. Between February 8, 2006 and July 17, 2006, defendant presented or caused to be presented such claims for payment to the United States knowing such claims were false or fraudulent, or with reckless disregard or deliberate ignorance of the truth or falsity of the claims.

39. By virtue of the false or fraudulent claims presented or caused to be presented by the defendant, plaintiff United States is entitled to statutory damages to be determined at trial, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each false claim presented or caused to be presented.

## **COUNT II**

(False Claims Act: Making or Using False Record or Statement to Cause Claim to be Paid)  
(31 U.S.C. § 3729(a)(2))

40. The United States re-alleges and incorporates by reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

41. This is a claim for statutory damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(2), against defendant for knowingly making, using, or causing to be made or used, false records or statements to get false or fraudulent claims paid or approved by the United States.

42. Defendant knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the United States.

43. By virtue of the false records or false statements presented by the defendant, plaintiff United States is entitled to statutory damages to be determined at trial, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each false claim presented or caused to be presented.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that:


That judgment be entered in its favor and against the defendant MIAMI REHAB for statutory damages and for civil penalties of between \$5,500 and \$11,000 for each false claim,



plus interest and costs, and for such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

R. ALEXANDER ACOSTA  
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Southern District of Florida



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